

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules	)	WT Docket No. 05-62
To Provide for Flexible Use of the 896-901 MHz	)	
and 935-940 MHz Bands Allotted to the Business	)	
and Industrial Land Transportation Pool	)	
	)	
Oppositions and Petitions for Reconsideration of	)	DA 04-3013
900 MHz Band Freeze Notice	)	

To: The Commission

**REPLY COMMENTS OF FLORIDA POWER & LIGHT COMPANY**

Florida Power & Light Company ("FPL"), by its attorneys and pursuant to Section 1.415(c) of the Commission's rules,<sup>1</sup> hereby files its reply comments in response to the Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 05-31, released February 16, 2005 ("NPRM"). By Order, DA 05-1084, released April 14, 2005, the time period for filing reply comments was extended until June 2, 2005.

**I. Background**

In its opening comments filed on May 18, 2005, FPL supported modification to the Commission's rulemaking proposal for 900 MHz. In particular, FPL urged the Commission to (1) adopt for 900 MHz the same interference protection rules that were adopted for 800 MHz; (2) set aside 2.5 MHz of spectrum for private internal use to be licensed on a site-by-site frequency coordinated first come, first served basis; and (3) require that geographic-area-based licensees coordinate their frequency usage with co-channel adjacent incumbents. FPL also suggested that

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<sup>1</sup> 47 C.F.R. § 1.415(c).

the spectrum that is auctioned be licensed by Basic Economic Area (“EA”) in 5-channel blocks, that loading requirements be retained for the spectrum reserved for private internal use, that geographic separation requirements and emission and field strength limits be adopted as proposed by the Commission, and that Part 90 of the Commission’s rules be applied to the use of the spectrum.

In these reply comments, FPL (1) further addresses the need to adopt for 900 MHz the same interference protection rules that were adopted for 800 MHz; (2) amends its comments concerning the modification and addition of sites by incumbents and supports the proposal in the “Joint Comments” filed by the Association of American Railroads (“AAR”), the American Petroleum Institute (“API”), MRFAC, Inc. (“MRFAC”), the National Association of Manufacturers (“NAM”), and the United Telecom Council (“UTC”) on May 18, 2005 to permit site modifications and additions that stay within the composite 22 dBμV/m interference contour based upon the originally licensed sites at maximum effective radiated power (“ERP”); and (3) urges that the pending applications for commercial use of the 900 MHz spectrum be dismissed.

## **II. Interference Protection**

In its Comments filed on May 18, 2005, Nextel Communications, Inc. (“Nextel”) contends that interference abatement policies are unnecessary at 900 MHz because Nextel has not received interference complaints at 900 MHz, that B/ILT licensees at 900 MHz have the resources to deploy robust, interference-resistant systems unlike public safety licensees at 800 MHz, and that the interference abatement procedures adopted at 800 MHz would be unduly burdensome at 900 MHz. The Joint Comments dispute each of the points made by Nextel. FPL agrees with the Joint Comments.

As discussed in its opening comments, FPL already has experienced interference caused by 800 MHz cellular systems to its 900 MHz system. Specifically, FPL spent over \$1 million

and extensive manpower to address interference issues that existed at 900 MHz when its current system was deployed. The interference was caused by adjacent commercial cellular systems in the extended cellular band that met the emission masks required by the Commission's rules. Therefore FPL is very concerned that a low site digital SMR system operating within the 900 MHz band will cause even greater interference to 900 MHz incumbent users.

The Joint Comments correctly explain that Nextel has not received complaints at 900 MHz because Nextel has not deployed many customers at 900 MHz. Accordingly, there are not yet enough Nextel iDEN users at 900 MHz to cause an interference problem. The existing situation is consistent with Nextel's experience at 800 MHz, where there was at least a 3-year period between when Nextel began deploying iDEN systems and it began receiving interference complaints from public safety users.

FPL also agrees with the Joint Comments response to Nextel's argument that B/ILT users have the funds to construct robust systems that can withstand interference from iDEN systems. As explained in the Joint Comments, critical infrastructure companies such as FPL do not have excess capital. As a regulated utility, FPL's costs are passed on to ratepayers, and FPL has an obligation to its ratepayers to minimize its costs so that utility rates can be kept as low as possible.

Lastly, Nextel's suggestion that the interference abatement procedures would be unduly burdensome turns on its head longstanding Commission policy. As pointed out in the Joint Comments, although all parties must cooperate with each other to resolve interference problems, it is not the responsibility of the victim of interference to pay to mitigate the interference. Rather, it is longstanding Commission policy that the party who causes the interference must

mitigate the interference,<sup>2</sup> even if that party is operating according to its authorized parameters.<sup>3</sup> If Nextel's 900 MHz iDEN system begins to cause interference to FPL's 900 MHz system, then Nextel would be responsible for mitigating the interference. The rules already adopted at 800 MHz, if applied to 900 MHz, would help alleviate interference problems that are bound to arise at 900 MHz.

### **III. Grandfathering Provisions for Incumbents**

In its opening comments, FPL supported the Commission proposal at para. 36 of the NPRM to define the existing protected service area of an incumbent B/ILT system by its originally-licensed 40 dB $\mu$ V/m field strength contour and provide incumbents with the flexibility to make modifications, so long as the original 40 dB $\mu$ V/m field strength contour is not expanded.

After reviewing the Joint Comments, FPL is changing its position on this issue and is now supporting the proposal in the Joint Comments. Specifically, FPL now agrees that the incumbent protected service area should be the 40 dB $\mu$ V/m field strength contour based on the maximum permissible ERP at the originally licensed site. As stated in the Joint Comments, Section 90.621(b) of the rules<sup>4</sup> is premised on protecting the 40 dB $\mu$ V/m service contour of 800 MHz and 900 MHz facilities. However, as proposed in the Joint Comments, FPL supports permitting incumbents to modify or add sites so long as the composite 22 dB $\mu$ V/m interference contour of the original sites based on the maximum ERP is not exceeded. Use of the 22 dB $\mu$ V/m contour would make the 900 MHz rules consistent with the 800 MHz rules, and would afford

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<sup>2</sup> See, e.g., *Broadcast Corp. of Georgia (WVEU(TV))*, 92 FCC 2d 910 (1982).

<sup>3</sup> See, e.g., *WKLX, Inc.*, 6 FCC Rcd. 225 at ¶ 10 (1991); *Broadcast Corp. of Georgia (WVEU(TV))*, 96 FCC 2d 901 (1984).

<sup>4</sup> 47 C.F.R. § 90.621(b).

incumbents maximum flexibility to make changes to their systems without encroaching on other incumbents or geographic area licensees.

#### **IV. Pending Applications**

In its comments, Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (“SouthernLINC”) advocates the dismissal of the various applications that were filed by ACI 900, Inc. for 900 MHz site-specific licenses prior to the imposition of the 900 MHz licensing freeze.<sup>5</sup> SouthernLINC argues that failure to dismiss the applications will deprive potential bidders of the ability to compete for the spectrum in an auction.

FPL has a more fundamental problem. If any of the applications were filed for channels that the Commission determines to set aside for private internal use, then an applicant that does not intend private internal use would not be qualified for such channels. Dismissing the applications would thus make channels available for FPL and other critical infrastructure companies to expand their internal communication systems. Moreover, to the extent that FPL and other critical infrastructure companies cannot find channels reserved for internal B/ILT use available to meet their spectrum needs, dismissal of the commercial use applications, followed by a period during which critical infrastructure companies can apply (subject to waiver of the licensing freeze) for such channels to be used solely for internal use, would provide critical infrastructure companies with sorely needed spectrum prior to the Commission auctioning the unassigned white spaces. As discussed, FPL and other utilities require the tools, including spectrum, to fulfill their important public service functions, and Commission spectrum policy must be able to satisfy the spectrum needs of utilities.

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<sup>5</sup> *Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band*, Public Notice, 19 FCC Rcd. 18277 (2004).

**V. Conclusion**

Florida Power & Light Company (1) urges adoption for 900 MHz the same interference protection rules that were adopted for 800 MHz; (2) supports the proposal in the “Joint Comments” filed by AAR, API, MRFAC, NAM and UTC to permit site modifications and additions that stay within the composite 22 dB $\mu$ V/m interference contour based upon the originally licensed sites at maximum ERP; and (3) urges that the pending applications for commercial use of the 900 MHz spectrum be dismissed.

Respectfully submitted,

FLORIDA POWER & LIGHT COMPANY

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Date: June 2, 2005